

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SUSAN REED as executrix of the ESTATE OF
SHARON L. SLONIGER,
SUSAN SLONIGER REED as executrix of
the ESTATE OF EDWARD SLONIGER, deceased,

Plaintiff,

v.

SIEGMUND DEJA,

Defendant.

ORDER
09-CV-858S

1. This Court previously referred the cases consolidated in the instant action¹ to the Honorable Hugh B. Scott, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1) to supervise all pre-trial matters and to prepare and file a report and recommendation containing findings of fact, conclusions of law and a recommended disposition on any dispositive motion. Plaintiff filed a summary judgment motion on March 20, 2014, with respect to the claims made on behalf of the Estate of Edward Sloniger.

2. On April 22, 2014, Judge Scott filed a Report and Recommendation recommending that Plaintiff's motion for summary judgment be granted on the issues of "serious injury" under N.Y. Insurance Law and Defendant's negligence. Pursuant to 28 U.S.C. § 636(b)(1)(C), any party may serve and file written objections to a report and recommendation of a magistrate judge within fourteen days after being served with a copy. Local Rule of Civil Procedure 72(b) further requires that written objections to a magistrate

¹In a February 11, 2014 order, this Court consolidated Case No. 10-CV-379 (brought by Susan Sloniger Reed as executrix of the estate of Edward Sloniger) into the instant case, No. 09-CV-858 (brought by Susan Sloniger Reed as executrix of the estate of Sharon L. Sloniger).

judge's report "shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for each objection, and shall be supported by legal authority." After *de novo* review of those portions of the report and recommendation to which proper objections are made, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." See 28 U.S.C. § 636(b)(1)(C); United States v. Gardin, 451 F. Supp. 2d 504, 506 (W.D.N.Y. 2006). Plaintiff timely filed objections to Judge Scott's Report and Recommendation on May 6, 2014, specifically with respect to the Magistrate Judge's finding that Defendant was not precluded from arguing the decedent's failure to mitigate damages in future proceedings.

3. Upon *de novo* review of the report in light of Plaintiff's timely filed objections, this Court finds no legal or factual error in Judge Scott's recommended disposition of Plaintiff's summary judgment motion, and the Report and Recommendation is accepted in its entirety.

4. Plaintiff also objects to Judge Scott's decision to deny her request for a stay of the proceedings on damages pending resolution of a not-yet-filed state insurance coverage action. Pursuant to 28 U.S.C. § 636(b)(1)(A), a magistrate judge may, with certain exceptions, hear and determine any pretrial matter pending before the court. The magistrate judge's order on such a pretrial matter will be reconsidered by the district judge only when it has been established that it is clearly erroneous or contrary to law. See 28 U.S.C. § 636(b)(1)(A). This burden has not been met here, therefore this objection will also be denied.

IT HEREBY IS ORDERED, that this Court ACCEPTS Judge Scott's April 22, 2014 Report and Recommendation (Docket No. 155) in its entirety;

FURTHER, that Plaintiff's Objections (Docket No. 156) are DENIED.

FURTHER, that Plaintiff's motion for summary judgment (Docket No. 144) is GRANTED to the extent stated in Judge Scott's report and recommendation.

SO ORDERED.

Dated: October 27, 2014
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
Chief Judge
United States District Court